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Heroes Forgotten: Just My Luck, I'm Broken for a Buck

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Poverty Law
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Heroes Forgotten: Just My Luck, I'm Broken for a Buck

I. Introduction: Who is a Veteran?

President Kennedy famously stated at his inaugural address: “Ask not ask not what your country can do for you — ask what you can do for your country.” Throughout our years as a nation, handfuls of men and women have heard the calling to serve in the United States of America’s armed forces. While serving in the military may be an arduous process, transitioning back into the civilian world can be onerous as well. Although the former service member may be returning to a familiar land, many are now returning with unique and stressful experiences, making transitioning to civilian life a difficult process. This paper will discuss aspects of what it means to be a veteran, who is a veteran, and potential benefits for veterans, with an emphasis on disability compensation.

Although many serve in the United States military, not all personnel will be awarded the title of veteran. A veteran is “a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable (meaning honorable, general under honorable, general, other than honorable, or bad conduct).”¹ The definition of armed forces has been expanded, including the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components.² This does not include the Merchant Marines; however, they have been narrow exceptions where Merchant Marines are considered veterans.³

¹ 38 U.S.C. § 101(2)

² 38 U.S.C. § 101(10)

³ *Id.*

Although some surveys of veterans' demographics mirror the demographics of the United States, surveys tend to show differences between the veteran population and the general population. In 2000, the general population was 63.1% White, 13% Black, 16.5% Hispanic, 4.6% Asian, .8% American Indian, .2% Other, and 1.9% of two or more races; however, the military population was 65.9%, 19.8%, 7.9%, 3.6%, 1.0%, 1.9%, and n/a, respectively.⁴ While white people and American Indians were fairly represented in the military, black people are overrepresented in the military, with other ethnic groups underrepresented in the military.

Additionally, people within the veteran population tend to be less educated than other civilians. The veteran population's education is approximately 11.1% less than a high school diploma, 29.9% High School/GED, 35.8% Post High School training, 23% Bachelor's degree or higher, and .2% unknown; comparatively, approximately 30% of civilians have a Bachelor's degree or higher.⁵

II. Overview of Veterans' Benefits

After a service member is discharged and receives his veteran status, he may be eligible for various benefits from the Veterans Administration (VA).⁶ There are three branches of the VA: the Veterans Benefits Administration (VBA), the Veterans Health Administration (VHA), and the National Cemetery Administration (NCA). There are various benefits that a veteran may be eligible to receive, including enrollment in the VA health care system, a VA home loan, VA education benefits, and VA compensation. Unfortunately, not all veterans utilize their benefits. Despite the estimated 20 million veterans, there are 8.97 million veterans enrolled in the VA health care system, 2.5 million VA home loan participants, 12 million utilizing education

⁴ Amy Lutz, Who Joins the Military?: A Look at Race, Class, and Immigration Status
<http://surface.syr.edu/cgi/viewcontent.cgi?article=1002&context=soc>

⁵ <https://www.va.gov/VETDATA/docs/SurveysAndStudies/VETPOP.pdf>

⁶ See www.va.gov

benefits, and 4.26 million receiving VA compensation.⁷ Although each of these unique benefits can assist veterans, each of these benefits deserves their own discussion. This paper will discuss one of the more controversial issues that veterans face, VA disability compensation.

Service connected compensation is a program available to veterans who experienced injuries in the military. Compensation is not based upon financial need. Generally speaking, veterans are entitled to disability compensation if they were “discharged or released under conditions other than dishonorable, their disease or injury was incurred or aggravated in the line of duty, and the disability is not a result of their own willful misconduct or abuse of alcohol or drugs.”⁸ Additionally, incidents that occur outside of normal work hours may be considered “in the line of duty,” as service members are often on call twenty-four hours a day. Therefore, some incidents that occur during “off hours” may still qualify a service member for service-connected disability.

If a veteran establishes a service connection for his injury, he will be assigned the appropriate disability rating.⁹ Although disability simply means an incapacity, the term when used by the VA means “the average impairment in earning capacity” resulting from diseases, injuries, or their residual conditions.¹⁰ This system means that some people may receive a lower or higher rating than another person, despite being in more pain. For example, a person may have strong pains in his shoulder but still have a lower rating than someone who cannot stand without being in pain. Although the second person may be in less pain, it is feasible that his lack of ability to stand would result in a higher impairment in earning capacity. The Court of Appeals for Veterans Claims (CAVC) has stated that the overall purpose of the disability compensation

⁷ https://www.va.gov/vetdata/docs/Quickfacts/Homepage_slideshow_06_04_16.pdf

⁸ Veterans Benefits Manual § 3.1.1

⁹ Veterans Benefits Manual § 5.1

¹⁰ *Id.*

system is “to compensate veterans ‘when they have, in honorable service to their nation, suffered a loss that is reflected in the decreased ability to earn a living for themselves and their families.’”¹¹ Although the CAVC uses the term “honorable service,” most people who served will also be eligible for VA disability compensation as well.¹²

However, disability compensation is not automatic; despite having an in-service injury, a veteran must still apply to receive disability compensation. In order to receive a disability rating, a veteran must meet the three aforementioned requirements. However, veterans have a unique standard to meet when petitioning for disability compensation. In criminal law, the standard of proof is beyond a reasonable doubt; in civil law, the standard of proof is a preponderance of the evidence; and in probate (and some areas of civil law) law, the standard of proof is clear and convincing. However, in the case of veterans, the standard of proof is “as likely as not.”¹³ In other words, unlike civil law, a “tie” goes to the veteran. However, this does not mean that merely applying will guarantee a disability rating. A veteran must still provide evidence, which can include, but is not limited to, the following: military service records, personal statements, lay statements from friends, and expert statements.

After a veteran shows that it is at least as likely as not that his injury was caused by or aggravated by his time in the service, he will then be awarded a disability rating. As noted above, the disability rating is based on the average impairment in earning capacity resulting from the injury, not the level of pain. A given injury can result in a disability rating anywhere from 0% to 100% in 10% increments. The Code of Federal Regulations has an extensive list of injuries with their respective disability ratings.¹⁴ Although there are code sections for ratings awarded during

¹¹ *Id.*

¹² See Veterans Benefits Manual § 3.1.1

¹³ 38 CFR § 3.102

¹⁴ 38 CFR § 3.350

peacetime and wartime, the process and compensation are the same.¹⁵ For example, there would be little distinction between an injured back during peacetime and the same injured back during wartime.

However, many veterans claim multiple disabilities. Some people mistakenly believe that a combined rating would be the sum of the individual ratings. Instead, the VA uses a complex mathematical formula in order to calculate ratings for multiple disabilities. In this case, the Code of Federal Regulations has a table to combine any two ratings.¹⁶ There are two sets of numbers; one going across and another going down. Simply find the intersection to find the combined rating. For three or more disabilities, a veteran can repeat the process over and over until all ratings are combined. After the final rating is established, it rounded to the nearest 10%.¹⁷ Based on their rating, a veteran receives a monthly compensation.¹⁸ Additionally, a veteran may be eligible for additional compensation if he has dependents or incurred unique injuries.¹⁹

III. Issues with Veterans and Benefits

However, despite the potential compensation, many veterans do not apply or qualify for disability compensation.²⁰ From my personal experience, most veterans feel guilty for receiving compensation; don't think they are eligible for disability compensation; or they simply don't know how to apply.

The first of these problems is guilt or the thought that a person is obtaining money by cheating the system. However, receiving a disability rating can award a veteran benefits outside

¹⁵ See U.S.C. §§ 1114, 1134

¹⁶ 38 CFR § 4.25

¹⁷ 38 CFR § 4.25(a)

¹⁸ 38 U.S.C. § 1114

¹⁹ 38 U.S.C. § 1115, 38 CFR 3.350

²⁰ https://www.va.gov/vetdata/docs/Quickfacts/Homepage_slideshow_06_04_16.pdf

of monetary compensation, such as state assistance with housing.²¹ However, some people feel guilty to take anything at all, or feel a stigma. For those who don't want "dirty money," they could use it for good by donating it. Although some people will insist that they don't want to apply, disability compensation may not be right for them, as their self-image is important to them. However, these people must carefully weigh their self-image against the monetary gain, as establishing a claim is harder as time goes by.

The next group of veterans that don't apply for compensation are those that don't think that they are eligible. Some veterans believe that being awarded a discharge other than honorable will disqualify them from applying for disability compensation. However, in addition to the Code of Federal Regulations, the main VA website states that a person only needs to be awarded a discharge other than dishonorable.²² There is a basic entitlement for veterans who served during wartime or peacetime; therefore all veterans have the basic entitlement to apply.²³ Finally, some veterans believe that they are ineligible to apply because they had a less severe version of the injury before they joined the service, or were susceptible to the injury due to genetics, or even had a possible latent condition that was amplified due to service. However, in any of these scenarios, there is a presumption of sound condition, which states that every veteran is considered to have been in sound condition "at entrance when examined, accepted, and enrolled for service, except as to defects, infirmities, or disorders noted at the time of the examination, acceptance, and enrollment, or where clear and unmistakable evidence demonstrates that the injury existed before acceptance and enrollment and was not aggravated by such service."²⁴

²¹ <https://www.calvet.ca.gov/>

²² <http://www.benefits.va.gov/benefits/>

²³ 38 U.S.C. § 1110, 38 U.S.C. § 1131

²⁴ 38 U.S.C. § 1111

Therefore, it is likely that a veteran may establish a claim for an unknown condition at the time of entrance.

The final reason why many veterans don't apply for disability compensation is that they simply do not know how to apply. As mentioned above, veterans disproportionally come from underprivileged ethnicities.²⁵ Furthermore, veterans are generally less educated than other civilians.²⁶ Given these two factors, it is less likely for some veterans to have the wherewithal or financial resources to establish a claim, either on their own, or with the aide of an attorney. Although there are laws relating to disability compensation, there isn't a law that requires the VA to disclose eligible benefits to the veteran. Although this may save money in the short term, this prevents many veterans from seeking treatment. This contributes to veterans' ordeals of homelessness and health issues, resulting in spending possibly more money than had the VA disclosed the information to veterans and service members.

After figuring out the complex and tedious process, some veterans are able to establish a service-connected disability and are awarded a final rating. However, despite understanding the VA's rationale for their numerical assessments, the end results don't seem fair.²⁷ Instead of evaluating the veteran's overall condition, the VA generally uses their chart without regards to the veteran's employability status. There is the exception of total disability based on individual unemployability (TDIU), which awards a veteran a 100% if they are unable to work.²⁸ However, most veterans are unlikely to qualify for TDIU.

²⁵ Amy Lutz, Who Joins the Military?: A Look at Race, Class, and Immigration Status
<http://surface.syr.edu/cgi/viewcontent.cgi?article=1002&context=soc>

²⁶ <https://www.va.gov/VETDATA/docs/SurveysAndStudies/VETPOP.pdf>

²⁷ See Veterans Benefits Manual § 5.1

²⁸ 38 CFR § 4.16

IV. Personal Experience with the Compensation System

The methodology currently used in the compensation system generally hurts veterans, but can help them in some cases. One of my fellow Soldiers enlisted in his mid-thirty's. During physical training, he severely injured the tendons in his knee. Unfortunately, this rendered him unable to exercise. As a result, he gained a substantial amount of weight and developed sleep apnea and other ailments. To this day he has trouble walking, and he cannot put too much weight on his right knee. He was awarded 20% for his knee, and was awarded a 90% rating overall.

However, another one of my fellow Soldiers had pre-existing knee problems, as he was an avid runner. However, due to the doctrine of sound condition, the further exacerbation of his knee qualified as a service-connected injury.²⁹ Additionally, he was awarded 50% for depression, and 10% for his back, despite being able to run. Overall, he was awarded a 70% rating.

This comparison of two veteran's ratings brings to light why many veterans are frustrated with the VA. Although the arguably more injured veteran receives \$663 more a month (\$410 had he not had a spouse and child), his life is more severely impacted. While one veteran can still exercise and do activities on most days (when his depression isn't effecting him), the other veteran is rendered unable to do most physical activities. Most people would argue that \$663/\$410 a month is not worth the difference of being physically injured and being severely handicapped.

V. Comparison to Means Test Systems

Despite the possible misfortune of getting an undesirable rating, the disability compensation program is an excellent assistance program. While comparable to Supplemental Security Income (SSI), Supplemental Nutrition Assistance Program (SNAP), and Social Security

²⁹ 38 U.S.C. § 1111

Disability (SSDI), the disability compensation program stands out because it does not take income or assets into account. The VA only looks at their rating system to decide how much to award a veteran.

Unlike the VA disability compensation program, SSI looks at income and unearned income. Although a person can theoretically earn \$1,500 a month and still be eligible for SSI, the applicant's SSI is reduced as the person's income goes up.³⁰ Furthermore, an applicant must have less than \$2,000 in assets (\$3,000 for a couple) in order to be able to apply for SSI.³¹ Like SSI, SNAP also has an asset limit. A person may not apply for SNAP if they have \$2,250 or more (\$3,250 if at least one person in the household is 60 or older, or is disabled).³²

However, SSDI does not have an income limit. However, the applicant must be unable to engage in substantial gainful employment, which currently means earning \$1170 a month.³³ However, if a person makes \$810 a month for nine months (which does not need to be consecutive) in a sixty-month period, then their SSDI is terminated.³⁴ Compared to these other assistance programs, the VA disability compensation program is arguably a good program.

VI. Recommendations for the Compensation System

Although the VA does assist many veterans in their daily lives, there is room for improvement. The VA currently uses an impersonal approach by looking at individual disabilities. However, I believe that the VA's disability compensation system would be improved if they took a more personal approach to truly evaluate the severity of a veteran's injury and their likely impact on employability. Currently, the evaluators simply use charts and

³⁰ <http://www.nolo.com/legal-encyclopedia/income-asset-limits-ssi-disability-eligibility.html>

³¹ *Id.*

³² <https://www.fns.usda.gov/snap/fact-sheet-resources-income-and-benefits>

³³ <https://www.ssa.gov/OACT/COLA/sga.html>

³⁴ *Id.*

check off blocks to determine the severity of any one injury. However, the process could be more accurate if there were questions that probed into the veteran's ability to be employed.

However, there are problems with this proposal. In order to have a more personal evaluation, the VA would need to hire experts in addition to their doctors, such as psychologists and social workers. This, along with the amount legislation to overhaul the disability compensation system would be extremely expensive. Furthermore, the overhaul would be very time consuming. 38 CFR Chapter I is an extensive work with multiple parts, each with different section. We have seen the time it takes the government to repeal one piece of legislation. To repeal one piece of legislation is difficult. To replace an entire chapter would be a phenomenon.

VII. Conclusion

Overall, the VA disability compensation program is set in place in order to financially help veterans. However, it may affect a veteran's eligibility for other assistance programs. Although this program often works, it could use some refinement. Conversely, refinement may not be possible or feasible. However, the greatest need is for veterans to understand that they are eligible to apply and to find someone who can assist them, regardless of what anyone may have told them.